

October 1, 2004

Mr. David Phelps
Air Quality Bureau
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa, 50322

Dear Mr. Phelps:

This letter is in response to your July 22, 2004 letter regarding US EPA's interpretation of the term "contiguous" in the definition of "major source" in 40 CFR Part 63. You specifically asked whether the term "contiguous" was intended to mean the same as "contiguous or adjacent" as that phrase is used in the definition of "major source" in other programs such as the Part 70 operating permits program.

The definition of "major source" in Section 63.2 states:

"Major source means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless the Administrator establishes a lesser quantity, or in the case of radionuclides, different criteria from those specified in this sentence."

This definition does not include the term adjacent. In addition, in a response to a public comment in the Background Information Document (EPA-453/R-02-002) for the April 5, 2002 amendments to the Part 63 General Provisions (66 FR 16582), the Agency stated that we do not consider the term "adjacent" to apply to Part 63. However it is clear that the Agency did intend the term "contiguous" to be interpreted broadly and for the permitting authorities to have flexibility in this matter when we stated in the same response to comment the following:

"Because it is impossible to anticipate all possible situations that may occur regarding major source determinations and contiguous facilities, these decisions must be made by the permitting authority on a case-by-case basis"

In the March 23, 2001 proposal to the Part 63 General Provision amendments, (66 FR 16324) the Agency also clarified that a public right of way through a major source would not create two separate sources. When determining whether facilities on separate properties are a single major source, the permitting authority should consider such things as the proximity of the facilities as well as the existence of physical or transportation links such as pipeline, railway, channels or conduit and the functional inter-relationship between the facilities.

Lastly, it should be noted that facilities that purposely attempt to circumvent Part 63 requirements by fragmenting their operations can be held liable under section 63.4(c).

This response has been coordinated with EPA's Office of Enforcement and Compliance Assurance and the Office of Air Quality Planning and Standards. If you have any questions regarding this issue, please contact Ward Burns of my staff at (913) 551-7960.

Sincerely,

JoAnn M. Heiman
Chief
Air Permitting and Compliance Branch

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